

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent of: Mario Boisvert *et al.*

Patent No.: 7, 579,802 B2

Filing Date: January 27, 2004

Title: COLLISION MONITORING SYSTEM

Examiner: Marlon T. Fletcher

Art Unit: 2837

Docket No.: 14-733C2D1

Tarolli, Sundheim, Covell & Tummino, LLP
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1300 East Ninth Street
Cleveland, OH 44114

MAIL STOP Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Renewed Statement Under 37 CFR 1.705(b)(2)

Dear Sir:

1. This statement is resubmitted in support of the “Application for Patent Term Adjustment Including Request for Reconsideration under 37 CFR 1.705(b)” for the above referenced patent. In view of the following facts, it is requested that the patent term adjustment of 550 days calculated by the United States Patent and Trademark Office (herein USPTO), see attachment A and indicated on the front sheet of US patent number 7,579,802 (herein ‘802 patent) be lengthened to 936 days.

2. On July 24, 2009 the Office of Petitions of the USPTO issued its decision dismissing as premature applicants' petition under 37 CFR 1.705(b) filed March 4, 2009 with the USPTO since "Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years." The dismissal also indicated that "Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d)"

3. The USPTO initial and updated determination of a patent term adjustment was in error due to the fact the PTO failed to take certain action within the time frame specified in 37 CFR 1.702(a) **and** failed to issue a patent within three years of the actual filing date of the above identified patent application in accordance with 37 CFR 1.702(b). (See *Wyeth v Dudas*, 88 USPQ 2d 1538 (Dist Ct DC, 2008)

A. Examination delay pursuant to 37 CFR 1.703(a)

Pursuant to 37 CFR 1.703(a)(1), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 USC 132 not later than 14 months after the actual filing date (i.e. by March 27, 2005)(herein "14 month delay") As the PTO failed to mail an action under 35 USC 132 until April 6, 2006, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) i.e March 28, 2005, and ending on the date of mailing of an action under 35 USC 132, i.e., April 6, 2006. Accordingly, the 14 Month Delay by the PTO is 375 days, which is in agreement with the period calculated by the PTO on the Patent term Adjustment History submitted herewith as Exhibit A.

Also pursuant to 37 CFR 1.703(a)(2), Applicants are entitled to a period of patent term adjustment due to failure by the PTO to mail an Office Action not later than four months after Applicants submitted a response to a previous action (herein "4 Month Delay").

i) Applicants submitted a Response to an Office action on June 5, 2006. Since the PTO failed to mail a subsequent Office Action until October 16, 2006, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is four months after the

date on which the response was filed i.e., October 6, 2006 and ending on the date the PTO mailed the subsequent Office Action , i.e., October 16, 2006. Therefore, the first period of patent term adjustment due to the 4 Month Delay is 11 days, which is in agreement with the period calculated by the PTO (See Exhibit A)

ii) Applicants submitted a Response to an Office action on June 20, 2007. Since the PTO failed to mail a subsequent Office Action until October 31, 2007, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is four months after the date on which the response was filed i.e., October 21, 2007 and ending on the date the PTO mailed the subsequent Office Action , i.e., October 31, 2007. Therefore, the second period of patent term adjustment due to the 4 Month Delay is 11 days, which is in agreement with the period calculated by the PTO (See Exhibit A)

iii) Applicants submitted a Response to an Office action on January 10, 2008. Since the PTO failed to mail a subsequent Office Action until May 30, 2008, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is four months after the date on which the response was filed i.e., May 11, 2008 and ending on the date the PTO mailed the subsequent Office Action , i.e., May 30, 2008. Therefore, the third period of patent term adjustment due to the 4 Month Delay is 20 days, which is in agreement with the period calculated by the PTO (See Exhibit A)

iv) Applicants submitted a Response to a Office action on August 19, 2008. Since the PTO failed to mail a subsequent Office Action until January 5, 2009, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is four months after the date on which the response was filed i.e., December 20, 2008 and ending on the date the PTO mailed the subsequent Office Action , i.e., January 5, 2009. Therefore, the fourth period of patent term adjustment due to the 4 Month Delay is 17 days, which is in agreement with the period calculated by the PTO (See Exhibit A).

The total of the four different 4 Month Delay periods is 59 days.

Also pursuant to 37 CFR 1.703(a)(6), Applicants are entitled to a period of patent term adjustment due to failure by the PTO to issue the ‘802 patent not later than four months after the issue fee was paid (herein “Patent Issuance Delay”).

Applicants paid the issue fee March 5, 2009. Accordingly, the day after the date that is four months after the date the issue fee was paid is July 6, 2009. The ‘802 patent issued August 25 so applicants are entitled to an additional patent term adjustment of 51 days which is consistent with the USPTO calculation on attachment A.

B. “Three Years Delay” Pursuant to 37 CFR 1.703

In addition to the patent term adjustment due to the 14 Month Delay and the 4 Month Examination Delays, Applicants are entitled to a period of patent term adjustment pursuant to 37 CFR 1.703(b) . The period of delay under 37 CFR 1.703(b) is equal to the number of days in the period beginning on the day after the date that is three years after the date on which the above application was filed under 35 USC 111(a), i.e., January 28, 2007 and ending on the date Applicants filed a Request For Continuing Examination, i.e. June 5, 2008. (See 37 CFR 1.703(b)(1)) Applicant has calculated the period of “Three Years Delay” of 495 days.

As set forth in 37 CFR 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of delays based on grounds set forth in 37 CFR 1.702 (herein “Office Delay”) reduced by the period of time during which Patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704 (hereinafter “Applicant Delay”). In this petition, the sum of the period of the 14 Month Delay and the four enumerated 4 Month Delays under 37 CFR 1.703 is referred to as “Examination Delay” and is 434 days. During pendency of the application, the total period of PTO Delay is the sum of the period of the Three Years Delay (495 days) under 37 CFR 1.703(b), the period of Examination Delay (434 days) under 37 CFR 1.703(a), and the Patent Issuance Delay under 37 CFR 1.703(a)(6) *to the extent these periods of delay are not overlapping.*

Applicants note, that the second and third “4 Month Delays” enumerated above overlap with the three year delay period (January 28, 2007 to June 5, 2008). Accordingly, Applicants

submit the total period of PTO delay is 949 days which is the sum of the Three Year Delay plus the period of Examination delay plus the Patent Issuance Delay, minus the period of overlap.

C. Applicant Delay

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay, which the PTO calculates as a period of 13 days due to the filing of an Information Disclosure statement 13 days after the filing of a Request for Continuing Examination that was filed June 5, 2008. . See “Applicant Delay” in Exhibit A. Applicant does not dispute the 13 day Applicant Delay calculated by the PTO. Accordingly, Applicants calculate that the correct patent term adjustment for the present application is 898 days which is the total period of PTO delay.

This calculation is arrived at by the following calculation:

14 month delay period	<u>375</u> days
Plus 4 month delay period	<u>59</u> days
Plus Patent Issuance Delay period	51 days
Plus Three year delay period	<u>495</u> days
Equals Total PTO Delay	<u>980</u> days
Minus Overlap, 4 month period and three year period	<u>31</u> days
Equals	<u>949</u> days
Minus Applicant delay	13 days
Equals Patent Term Adjustment	936 days

4. Applicants submit the present patent application is not subject to a terminal disclaimer.
5. The only circumstance during the prosecution of the application that constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set for

37 CFR 1.704 is the 13 day delay in filing an Information Disclosure Statement subsequent to filing a request for RCE.

In view of the foregoing, it is respectfully requested that this application for Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term adjustment be issued to reflect a patent term adjustment of 936 days.

Respectfully Submitted,

Date: September 23, 2009

/Stephen J. Schultz/

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EXHIBIT A

Patent Term Adjustment

Filing or 371(c) Date:	01-27-2004	USPTO Delay (PTO) Delay (days):	563
Issue Date of Patent:	08-25-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	0
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	550
USPTO Adjustment (days):	-13	Explanation Of Calculations.	i

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
08-05-2009	PTA 36 Months	78	
08-25-2009	Patent Issue Date Used in PTA Calculation	51	
07-29-2009	Dispatch to FDC	❖	
07-27-2009	Mail-Petition Decision - Granted in Part	❖	
07-24-2009	Petition Decision - Granted in Part	❖	
07-21-2009	Adjustment of PTA Calculation by PTO		13
07-21-2009	Adjustment of PTA Calculation by PTO		
03-04-2009	Petition Entered	❖	
03-10-2009	Application Is Considered Ready for Issue	❖	
03-05-2009	Issue Fee Payment Verified	❖	
03-05-2009	Issue Fee Payment Received	❖	
02-24-2009	Mail Notice of Allowance	❖	
02-19-2009	Notice of Allowance Data Verification Completed	❖	
02-19-2009	Case Docketed to Examiner in GAU	❖	
02-19-2009	Document Verification	❖	
01-26-2009	Date Forwarded to Examiner	❖	
01-20-2009	Amendment after Final Rejection	❖	
01-05-2009	Mail Final Rejection (PTOL - 326)	17	
01-05-2009	Final Rejection	❖	
10-24-2008	Mail Examiner Interview Summary (PTOL - 413)	❖	
09-25-2008	Examiner Interview Summary Record (PTOL - 413)	❖	
10-06-2008	Date Forwarded to Examiner	❖	
08-19-2008	Response after Non-Final Action	❖	
07-23-2008	Mail Non-Final Rejection	❖	
07-21-2008	Non-Final Rejection	❖	
06-05-2008	Information Disclosure Statement considered		
06-05-2008	Information Disclosure Statement considered		
06-18-2008	Information Disclosure Statement considered		
06-18-2008	Information Disclosure Statement (IDS) Filed		

06-05-2008	Reference capture on IDS		
06-05-2008	Information Disclosure Statement (IDS) Filed		
06-30-2008	Date Forwarded to Examiner		
06-30-2008	Date Forwarded to Examiner		
06-05-2008	Request for Continued Examination (RCE)		
06-30-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
06-18-2008	Information Disclosure Statement (IDS) Filed		
06-05-2008	Information Disclosure Statement (IDS) Filed		
06-05-2008	Information Disclosure Statement (IDS) Filed		
06-05-2008	Workflow - Request for RCE - Begin		
05-30-2008	Mail Final Rejection (PTOL - 326)	20	
05-28-2008	Final Rejection	❖	
02-02-2008	Date Forwarded to Examiner	❖	
01-10-2008	Response after Non-Final Action	❖	
10-31-2007	Mail Non-Final Rejection	11	
10-26-2007	Non-Final Rejection	❖	
07-02-2007	Oath or Declaration Filed (Including Supplemental)	❖	
07-02-2007	Rule 47 / 48 Correction of Inventorship Papers Filed	❖	
06-23-2007	Date Forwarded to Examiner	❖	
06-20-2007	Response after Non-Final Action	❖	
05-30-2007	Examiner Interview Summary Record (PTOL - 413)		
04-10-2007	Mail Non-Final Rejection		
04-02-2007	Non-Final Rejection		
12-26-2006	Date Forwarded to Examiner		
12-13-2006	Response after Non-Final Action		
10-16-2006	Mail Non-Final Rejection	11	
10-13-2006	Non-Final Rejection	❖	
08-02-2006	Correspondence Address Change	❖	
06-09-2006	Date Forwarded to Examiner	❖	
06-05-2006	Response after Non-Final Action	❖	
04-06-2006	Mail Non-Final Rejection	375	
04-03-2006	Non-Final Rejection	❖	
11-26-2004	Information Disclosure Statement considered	❖	
12-30-2005	Correspondence Address Change	❖	
12-09-2005	Mail-Record Petition Decision of Granted to Make Special	❖	
04-25-2005	Petition Entered	❖	
12-08-2005	Correspondence Address Change	❖	

11-26-2004	Reference capture on IDS	
11-26-2004	Information Disclosure Statement (IDS) Filed	
11-26-2004	Information Disclosure Statement (IDS) Filed	
07-15-2004	IFW TSS Processing by Tech Center Complete	
07-15-2004	Case Docketed to Examiner in GAU	
01-27-2004	Preliminary Amendment	
06-16-2004	Application Return from OIPE	
06-16-2004	Application Return TO OIPE	
06-16-2004	Application Return from OIPE	
06-17-2004	Application Is Now Complete	
06-16-2004	Application Return TO OIPE	
06-15-2004	Application Return from OIPE	
06-16-2004	Application Is Now Complete	
06-15-2004	Application Return TO OIPE	
06-15-2004	Application Dispatched from OIPE	
06-16-2004	Application Is Now Complete	
03-10-2004	Cleared by OIPE CSR	
02-04-2004	IFW Scan & PACR Auto Security Review	
01-27-2004	Initial Exam Team nn	